

James D. Petruzzi (SBN 115175)
THE PETRUZZI LAW FIRM
4900 Woodway Dr., Suite 745
Houston, Texas 77056
Telephone: (713) 840-9993
Facsimile: (713) 877-9100
jdpetruzzi@gmail.com

Lien K. Dang (Bar No. 254221)
KIRKLAND & ELLIS LLP
3330 Hillview Avenue
Palo Alto, California 94304
Telephone: (650) 859-7000
Facsimile: (650) 859-7500
lien.dang@kirkland.com

MARTIN J. SIEGEL
Appearing *Pro Hac Vice*
Law Offices of Martin J. Siegel
2222 Dunstan
Houston, TX 77005
(281) 772-4568
martin@Siegelfirm.com

Natalie Flechsig (Bar No. 300515)
KIRKLAND & ELLIS LLP
555 California Street, 27th Floor
San Francisco, CA 94104
Telephone: (415) 439-4000
Facsimile: (415) 439-5000
natalie.flechsig@kirkland.com

Attorneys for Plaintiff
DR. SHAUN L. W. SAMUELS

Attorneys for Defendants
TRIVASCULAR, INC., MICHAEL A.
CHOBOTOV, PH.D., ROBERT G. WHIRLEY,
PH.D., AND JOSEPH W. HUMPHREY, PH.D.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DR. SHAUN L. W. SAMUELS
Plaintiff,
vs.
TRIVASCULAR, INC., ET AL.,
Defendants

Case No.: CV-13-2261-EMC
Hon. Edward M. Chen

STIPULATION AND ~~PROPOSED~~
ORDER DISMISSING TRIVASCULAR'S
COUNTERCLAIMS TWO THROUGH
FIVE WITHOUT PREJUDICE

TRIVASCULAR, INC.
Counter-Claimant,
vs.
DR. SHAUN L. W. SAMUELS
Counter-Defendant

The parties through undersigned counsel respectfully submit the following stipulation:

WHEREAS, on August 13, 2015, Samuels filed his Second Amended Complaint (Dkt. No. 77);

WHEREAS, on August 27, 2015, TriVascular filed its counterclaims one (Declaratory Judgment of Non-Infringement of the '575 Patent), two (Declaratory Judgment of Invalidity of the '575 Patent), three (Breach of Co-Investigator Agreements), four (Breach of Settlement Agreement), and five (Promissory Estoppel) against Samuels (Dkt. No. 78);

WHEREAS on September 14, 2015 Samuels filed his answer to TriVascular's counterclaims, denying each counterclaim (*i.e.*, Declaratory Judgment of Non-Infringement of the '575 Patent; Declaratory Judgment of Invalidity of the '575 Patent; Breach of Co-Investigator Agreements; Breach of Settlement Agreement; and Promissory Estoppel) (Dkt. No. 80);

WHEREAS, on December 17, 2015, this Court entered a final judgment of non-infringement of the '575 patent (Dkt. No. 98);

WHEREAS, on November 3, 2016, the Federal Circuit issued a judgment and order pursuant to Fed. Cir. R. 36 affirming this Court's finding of non-infringement of the '575 patent (Case 16-1490, Dkt. No. 48);

WHEREAS, on December 29, 2016, the Federal Circuit issued a mandate to this Court (Dkt. No. 111);

WHEREAS, TriVascular's counterclaims two through five remain pending before this Court;

WHEREAS, under Fed. R. Civ. P. 41(a)(1)(A)(ii) and 41(c), TriVascular may dismiss its counterclaims two through five without a court order by filing a stipulation of dismissal signed by all parties who have appeared;

WHEREAS, between January 5, 2017 and February 14, 2017, counsel for TriVascular and counsel for Samuels met and conferred regarding TriVascular's request that Samuels stipulate to dismissal of TriVascular's counterclaims two through five without prejudice;

1 **WHEREAS**, in an effort to minimize the disputes between the parties and in the interests of
2 conserving judicial and party resources, Samuels agreed on February 14, 2017 to TriVascular's
3 request to dismiss TriVascular's counterclaims two through five without prejudice;

4 **WHEREAS**, on February 15, 2017, Samuels filed Plaintiff's Objection to Reply Evidence
5 Under Local Rule 7-3 in which he stated that "Samuels has now agreed to a dismissal without
6 prejudice [of TriVascular's counterclaims] in order to avoid future litigation and expense." (Dkt.
7 No. 134 at 4).

8 **ACCORDINGLY, IT IS HEREBY STIPULATED THAT:**

9 TriVascular's counterclaims two through five may be dismissed without prejudice.

10
11 DATED: March 1, 2017

Respectfully submitted,

12 /s/ James D. Petruzzi
13 James D. Petruzzi (SBN 115175)
14 THE PETRUZZI LAW FIRM
15 4900 Woodway Dr., Suite 745
16 Houston, Texas 77056
17 Telephone: (713) 840-9993
18 Facsimile: (713) 877-9100
19 Jdpetruzzi@gmail.com

20 MARTIN J. SIEGEL
21 Appearing *Pro Hac Vice*
22 Law Offices of Martin J. Siegel
23 2222 Dunstan
24 Houston, TX 77005
25 (281) 772-4568
26 martin@Siegelfirm.com

27 Attorneys for Plaintiff
28 Dr. SHAUN L. W. SAMUELS

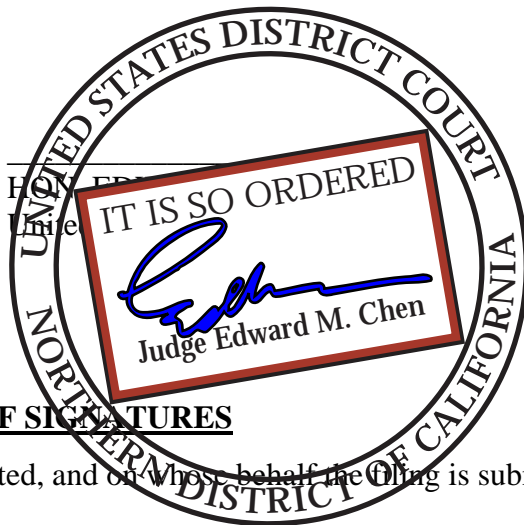
29 /s/ Lien K. Dang
30 Lien K. Dang (Bar No. 254221)
31 KIRKLAND & ELLIS LLP
32 3330 Hillview Avenue
33 Palo Alto, California 94304
34 Telephone: (650) 859-7000
35 Facsimile: (650) 859-7500
36 lien.dang@kirkland.com

Natalie Flechsig (Bar No. 300515)
KIRKLAND & ELLIS LLP
555 California Street, 27th Floor
San Francisco, CA 94104
Telephone: (415) 439-4000
Facsimile: (415) 439-5000
natalie.flechsig@kirkland.com

Attorneys for Defendants
TRIVASCULAR, INC., MICHAEL
A.CHOBOTOV, PH.D., ROBERT G.
WHIRLEY, PH.D., AND JOSEPH W.
HUMPHREY, PH.D.

[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED this 2nd day of March, 2017
that TriVascular's counterclaims two through five are dismissed without prejudice, pursuant to Fed.
R. Civ. P. 41.



ATTESTATION OF SIGNATURES

I, Lien K. Dang, attest that all signatories listed, and on whose behalf the filing is submitted,
concur in the filing's content and have authorized the filing.

Dated: March 1, 2017

KIRKLAND & ELLIS LLP

/s/ Lien K. Dang
Lien K. Dang

Attorney for Defendants
TRIVASCULAR, INC., MICHAEL
A. CHOBOTOV, PH.D., ROBERT G.
WHIRLEY, PH.D., AND JOSEPH W.
HUMPHREY, PH.D